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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

TINA COLEMAN,) Case No.
Plaintiff,)
vs.) **COMPLAINT**
DANIEL N. GORDON, P.C., AND ASSET) **JURY TRIAL DEMANDED**
ACCEPTANCE, LLC,)
Defendants.)

NATURE OF ACTION

1. This is an action brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this State and this district, where Plaintiff resides in this State and this district, and where Defendants transact business in this State and this district.

PARTIES

1
2 4. Plaintiff, Tina Coleman (“Plaintiff”), is a natural person who at all relevant
3 times resided in the State of Washington, County of Spokane, and City of Spokane.

4
5 5. Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a(3), as
6 she is a natural person alleged by Defendants to be obligated to pay a debt that was incurred for
7 personal, family, or household purposes.

8
9 6. Defendant, Asset Acceptance, LLC, (“Asset Acceptance”), is an entity who
10 acquires debt in default merely for collection purposes, and who at all relevant times was
11 engaged in the business of attempting to collect a debt from Plaintiff.

12
13 7. Asset Acceptance, LLC is a Delaware limited liability company engaged, by use
14 of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as
15 defined by 15 U.S.C. §1692a(5). At all relevant times, Asset Acceptance, LLC, acted as a
“debt collector” within the meaning of 15 U.S.C. § 1692a(6).

16
17 8. Defendant, Daniel N. Gordon, P.C., (“Gordon”) is a law office engaged, by use
18 of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as
19 defined by 15 U.S.C. §1692a(5). At all relevant times, Daniel N. Gordon, P.C. acted as a “debt
20 collector” within the meaning of 15 U.S.C. § 1692a(6).

21
22 9. Gordon’s principal place of business is 4023 W. 1st Avenue, Eugene, Oregon.

23
24 10. Gordon services consumer debt portfolios placed with it for collection by
financial institutions and other third parties, on a contingent fee basis.

25
26 11. Gordon and Asset Acceptance (collectively, “Defendants”), contributed to or
participated in, authorized, or implemented the policies regarding the acts complained of which
27 caused injuries to Plaintiff.

12. Gordon and Asset Acceptance combined and concurred with each other in
1 committing the acts complained of.
2

3. Gordon and Asset Acceptance acted at all times in concert with, or as principal
4 or agent or employee of the other in a common financial enterprise.
5

6. Gordon and Asset Acceptance, in carrying out the acts complained of, were at
7 all relevant times acting within the scope, purpose, and authority of such agency, service, or
8 employment.
9

10. Gordon and Asset Acceptance acted with the express or implied permission,
11 knowledge, consent, or ratification of each other. Under the FDCPA, Asset Acceptance as a
12 collection agency is vicariously liable for the conduct of Gordon, its collection attorney as its
13 agent. (See e.g. *Newman v. Checkrite California, Inc.*, 912 F. Supp 1354 (E.D. Cal. 1995);
14 *Martinez v. Albuquerque Collection Services*, 867 F. Supp. 1495 (D. N.M. 1994); *Ditty v.*
15 *CheckRite, Ltd.*, 973 F. Supp. 1320 (D. Utah 1997)).
16

FACTUAL ALLEGATIONS

17. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed
18 or due, or asserted to be owed or due a creditor other than Gordon or Asset Acceptance.
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20. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed
21 or due a creditor other than Gordon or Asset Acceptance, arises from a transaction in which the
22 money, property, insurance, or services that are the subject of the transaction were incurred
23 primarily for personal, family, or household purposes.
24

25. Gordon and Asset Acceptance use instrumentalities of interstate commerce or
26 the mails in a business the principal purpose of which is the collection of any debts, and/or
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28

1 regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be
2 owed or due another.

3 19. Asset Acceptance purchases debts once owed or once due, or asserted to be once
4 owed or once due a creditor.

5 20. Asset Acceptance acquired Plaintiff's debt once owed or once due, or asserted to
6 be once owed or once due a creditor, when the debt was in default.

7 21. Asset Acceptance is thoroughly enmeshed in the debt collection business, and
8 Asset Acceptance is a significant participant in Gordon's debt collection process.

9 22. On information and belief, on or about December 19, 2006, Asset Acceptance
10 obtained a judgment against Plaintiff in the District Court for the County of Snohomish, Everett
11 Division, for an alleged debt arising from a Providian credit card account.

12 23. Plaintiff does not recognize the alleged credit card debt, has not had a credit card
13 in over a decade, and has not received any credit card billing statements relating to the alleged
14 Providian credit card account.

15 24. Plaintiff was never served with the summons and complaint in that action.

16 25. Gordon filed a fraudulent proof of service of the summons and complaint in that
17 action, claiming to have served Mr. Gary Coleman at a time and place that it was impossible to
18 have served him. The Coleman's live in a very secure, gated community, and access to their
19 home is only through an intercom and lock-release system. On the date of the alleged service,
20 Tuesday, April 25, 2006, no process server attempted to or gained access to their home by
21 intercom and lock-release. Further, Mr. Coleman was at work until 8 p.m. on the very evening
22 that the process server claims to have served him at home at 7:33 p.m.
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1 26. Gordon then obtained a default judgment against Plaintiff without notice, and
2 took no action to collect upon it for more than three years.

3 27. Plaintiff did not receive notice, and had no knowledge of the December 19, 2006
4 default judgment until at least October 28, 2009. Plaintiff did not have any expectation of
5 receiving such notice because she had not owned a Providian credit card, nor had she received
6 any bills, invoices, correspondence or accountings from Providian Bank or any other credit
7 card company.

8 28. The first communication Plaintiff received from Defendants was a letter dated
9 October 28, 2009, from Daniel N. Gordon, P.C., which reads in part, as follows:

10 Dear Tina C. Coleman:

11 My client Asset Acceptance, LLC. obtained a judgment
12 against you on December 19, 2006 and is currently pursuing post-
13 judgment collection remedies against you. The current balance of
14 that judgment is listed below.

15 Please contact this office as soon as possible to avoid
16 further post-judgment collection activity and arrange a voluntary
17 means of payment. If you would like to make a payment online
18 via check or credit card please visit www.dgordonpc.com.

19 This communication is from a debt collector. This is an
20 attempt to collect a debt, and any information obtained will be used
21 for that purpose.

22 DANIEL N. GORDON, P.C.

23 (See Exhibit A, attached).

24 29. Gordon did not advise Plaintiff in the October 28, 2009 letter, or in writing
25 within five days of that first communication, of her right to validation and dispute, as required
26 by 15 U.S.C. §1692g. In fact, Plaintiff has never received an advisement of her §1692g rights
27 from Gordon.

1 30. Plaintiff disputed the debt both orally and in writing. Plaintiff's written dispute
2 and request for validation to Gordon, dated November 23, 2009, is attached as Exhibit B.

3 31. Plaintiff never received validation of the debt from Gordon.

4 32. On information and belief, no validation documentation exists to show that
5 Plaintiff owes the alleged debt.

6 33. Defendants are unable to produce any documentation to show that Plaintiff ever
7 owned or used the alleged credit card, and on information and belief, no credit card contract
8 exists between Plaintiff and the alleged original creditor.

9
10 34. Regardless, Gordon filed an Application for Writ of Garnishment in the District
11 Court for the County of Snohomish, Everett Division. Gordon did not serve Notice to Plaintiff
12 at her residence address in Spokane.

13
14 35. Plaintiff first received notice of the attempted garnishment in or about March
15 2010, when she received a copy of her bank's Answer of Garnishee dated February 9, 2010.

16
17 36. Defendants brought a legal action on a debt against Plaintiff in a judicial district
18 other than the judicial district where Plaintiff signed the contract sued upon or the judicial
19 district in which Plaintiff resided at the commencement of the action. Plaintiff lived in
20 Spokane County at the time of the garnishment filed by Gordon.

21
22 37. Gordon knew that Plaintiff did not live in Snohomish County because Gordon
23 sent the October 28, 2009 letter to Plaintiff prior to the garnishment at her current address in
24 Spokane County. Gordon also received Plaintiff's dispute letter bearing her current address in
25 Spokane County prior to the garnishment.

38. Additionally, Gordon knew or should have known that Plaintiff did not sign the contract sued upon in Snohomish County given that the creditor's records for the debt would demonstrate that fact.

39. Defendants failed to cease collection of a disputed debt until providing validation. Defendants never provided validation, but proceeded to obtain a garnishment of Plaintiff's bank account regardless.

40. Plaintiff and her husband, Gary Coleman, have obtained separate counsel to represent them in an application to vacate the default judgment obtained by Defendants, and the District Court for the County of Snohomish, Everett Division, has entered an Order to Show Cause regarding the same. (*Asset Acceptance LLC v. Coleman*, Case No. C060183). On information and belief, as of the date of this complaint, due to a discovery dispute pending in that case, the hearing on the Order to Show Cause has not yet been set.

COUNT I
VIOLATION OF THE FDCPA, §1692g(a)

41. Plaintiff repeats and re-alleges each and every allegation set forth above.

42. Defendants violated 15 U.S.C. §1692g(a), by failing to provide the notices required in §1692g(a) in its initial communication, or in writing within five (5) days thereafter. (Exhibit A).

43. Defendants further violated 15 U.S.C. §1692g by utterly and completely failing to provide validation upon receipt of Plaintiff's written dispute and request for validation. (Exhibit B).

44. Defendant Asset Acceptance is vicariously liable for the actions of Defendant Gordon in violation of the FDCPA.

1 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
2 severally, as follows:

- 3 a) Adjudging that Defendants violated 15 U.S.C. § 1692g(a);
- 4 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the
5 amount of \$1,000.00;
- 6 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- 7 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- 8 e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be
9 allowed under the law;
- 10 f) Awarding such other and further relief as the Court may deem just and proper.

13 **COUNT II**
14 **VIOLATION OF THE FDCPA, §1692g(b)**

15 45. Plaintiff repeats and re-alleges each and every allegation set forth above.
16 46. Defendants violated 15 U.S.C. §1692g(b), which provides:

17 If the consumer notifies the debt collector in writing within the
18 thirty-day period described in subsection (a) of this section that the
19 debt, or any portion thereof, is disputed, or that the consumer
20 requests the name and address of the original creditor, **the debt**
21 **collector shall cease collection of the debt**, or any disputed
22 portion thereof, until the debt collector obtains verification of the
23 debt or a copy of a judgment, or the name and address of the
24 original creditor, and a copy of such verification or judgment, or
name and address of the original creditor, is mailed to the
consumer by the debt collector.

25 15 U.S.C. §1692g(b)(emphasis added).

26 47. Plaintiff disputed the alleged debt both orally and in writing. Defendants
27 violated §1692g(b) by failing to cease to collect the alleged debt until verification was
28

1 provided. Rather, Defendants pursued a writ of garnishment against Plaintiff's bank account
 2 without ever having provided verification of the alleged debt.

3 48. Defendant Asset Acceptance is vicariously liable for the actions of Defendant
 4 Gordon in violation of the FDCPA.

5 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
 6 severally, as follows:

- 8 a) Adjudging that Defendants violated 15 U.S.C. § 1692g(b);
- 9 b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the
 10 amount of \$1,000.00;
- 11 c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- 12 d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- 13 e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be
 14 allowed under the law;
- 15 f) Awarding such other and further relief as the Court may deem just and proper.

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 17 **COUNT III**
 18 **VIOLATION OF THE FDCPA, §1692i(a)(2)**

19 49. Plaintiff repeats and re-alleges each and every allegation set forth above.

20 50. Defendants violated 15 U.S.C. §1692i(a)(2), by bringing a legal action against
 21 Plaintiff on a debt in a judicial district other than the judicial district where Plaintiff signed the
 22 contract sued upon or the judicial district in which Plaintiff resided at the commencement of the
 23 action.

24 51. Under the §1692i of the FDCPA, a debt collector's application for writ of
 25 garnishment, as an action in enforcement of a previously obtained judgment, falls within the
 26 §1692i venue provision. (*Fox v. Citicorp Credit Servs., Inc.*, 15 F. 3d 1507 (9th Cir. 1994)).

1 52. Defendants knew or should have known that Plaintiff resided in Spokane,
2 Washington at the time it filed the action, because it had sent correspondence to, and received
3 correspondence from Plaintiff at her correct residence address in Spokane, Washington, prior to
4 filing the garnishment action.

5 53. Due to Defendants actions in intentionally filing the garnishment proceeding in
6 a distant county and failing to give Plaintiff notice of the same, the first time that Plaintiff
7 became aware of the garnishment proceeding was on or about February 9, 2010.
8

9 54. Defendant Asset Acceptance is vicariously liable for the actions of Defendant
10 Gordon in violation of the FDCPA.
11

12 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
13 severally, as follows:
14

- 14 g) Adjudging that Defendants violated 15 U.S.C. § 1692i;
- 15 h) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the
16 amount of \$1,000.00;
- 17 i) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- 18 j) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- 19 k) Awarding Plaintiff any pre-judgment and post-judgment interest as may be
20 allowed under the law;
- 21 l) Awarding such other and further relief as the Court may deem just and proper.

22
23 **COUNT IV**
24 **VIOLATION OF THE FDCPA, §1692f**
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26 55. Plaintiff repeats and re-alleges each and every allegation set forth above.
27

28 56. 15 U.S.C. § 1692f provides:

1 A debt collector may not use unfair or unconscionable means to
2 collect or attempt to collect any debt. Without limiting the general
3 application of the foregoing, the following conduct is a violation of
4 this section:

5 57. The FDCPA defines neither the term “unconscionable,” nor “unfair.” The
6 FDCPA does, however, broadly enumerate several practices considered contrary to its stated
7 purpose, forbidding such action both generally and in a specific list of disapproved practices.
8 Particular to “unfair or unconscionable means,” the FDCPA lists eight specific violations
9 “without limiting the general application” of the statute. 15. U.S.C. § 1692f. As section 1692f
10 of the FDCPA explicitly states, the listing of the eight specific violations was not intended to
11 limit the applicability of the general prohibition of “unfair or unconscionable” behavior. *See*
12 *McMillan v. Collection Professionals Inc.*, 455 F. 3d 754 (7th Cir. 2006).

13 58. 15 U.S.C. §1692f “serves a backstop function, catching those “unfair practices”
14 which somehow manage to slip by §§ 1692d & 1692e.” *Edwards v. McCormick*, 136 F. Supp.
15 2d 795 (S.D. Ohio 2001). 15 U.S.C. §1692f “allows the court to sanction improper conduct
16 that the FDCPA fails to address specifically.” *Adams v. Law Offices of Stuckert & Yates*, 926 F.
17 Supp. 521, 528 (E.D. Pa. 1996), citing *Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456,
18 1461 n. 10 (C.D. Cal. 1991).

19 **Defendants Violated 15 U.S.C. § 1692f In Seeking Entry Of Judgment Against Plaintiff
20 Absent Necessary And Proper Notice Of The Same**

21 59. Defendants utilized unfair or unconscionable means against Plaintiff in
22 connection with an attempt to collect the subject debt in seeking entry of judgment against
23 Plaintiff absent necessary and proper notice of the same.
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1 60. Sometime prior to December 19, 2006, Gordon issued a summons in connection
2 with a lawsuit initiated collect an alleged debt arising from an alleged Providian credit card
3 account.

4 61. Gordon failed to serve Plaintiff with the summons that it issued.

5 62. Gordon filed a fraudulent declaration of service stating that its process server
6 had personally served Mr. Gary Coleman at a time and place that it was impossible for him to
7 have been served.

8 63. On December 19, 2006, the District Court for the State of Washington for
9 Snohomish County, Everett Division entered an order and judgment against Plaintiff.

10 64. Plaintiff was first made aware of the judgment in October 2009, and thereupon
11 informed Gordon that she was unaware of the judgment, and that at no time had she been
12 served with papers relating to Defendants' attempt to enter judgment against her, and in fact
13 she had never owned or used such a credit card.

14 65. On or near January 2010, Gordon first filed a writ of garnishment to collect the
15 judgment entered on December 19, 2006.

16 66. Gordon failed to serve notice of its application for writ of garnishment upon
17 Plaintiff.

18 67. Plaintiff's first notice of the writ of garnishment was when she received a copy
19 of the Answer of Garnishee from her bank, dated February 9, 2010.

20 **Defendants Violated 15 U.S.C. § 1692f In Purposefully Delaying Efforts To Collect The
21 Subject Debt**

22 68. Defendants utilized unfair or unconscionable means against Plaintiff in
23 connection with an attempt to collect the subject debt in purposefully delaying efforts to collect
24 the subject debt.

1 69. Asset Acceptance purchased a debt allegedly owed by Plaintiff to a third-party
 2 creditor sometime prior to 2006.

3 70. Not until October of 2009 did the law firm of Daniel N. Gordon, PC, mail
 4 Plaintiff notice of the December 2006 default judgment, in attempt to collect the alleged debt
 5 from Plaintiff.

6 71. In other words, Asset Acceptance waited at least three years to take any action
 7 in an attempt to collect the alleged debt owed by Plaintiff. Interest on the alleged debt accrued
 8 during such time.

9
 10 72. Asset Acceptance is not entitled to the full amount the interest accrued from
 11 2006 to 2009 where Asset Acceptance purposefully delayed collection efforts, and failed to
 12 mitigate resulting damages as required by law. Notwithstanding, Defendants attempted to
 13 collect from Plaintiff the full amount of the interest accrued from 2006 to 2009.

14
 15 73. Plaintiff was unduly prejudiced by repeated, unnecessary, and unexplained
 16 delays in Defendants' attempts to collect the alleged debt from Plaintiff.

17
 18 **Defendants Violated 15 U.S.C. § 1692f In Failing To Provide Plaintiff With Notice Of
 Writ Of Garnishment As Required By Washington Law.**

19
 20 74. The Revised Code of Washington at section 6.27.130 provides:

21 (1) When a writ is issued under a judgment, on or before the date
 22 of service of the writ on the garnishee, **the judgment creditor
 shall mail or cause to be mailed to the judgment debtor**, by
 23 certified mail, addressed to the last known post office address of
 24 the judgment debtor, (a) a copy of the writ and a copy of the
 25 judgment creditor's affidavit submitted in application for the writ,
 26 and (b) **if the judgment debtor is an individual, the notice and
 claim form prescribed in RCW 6.27.140.** In the alternative, on or
 27 before the day of the service of the writ on the garnishee or within
 28 two days thereafter, **the stated documents shall be served on the
 judgment debtor** in the same manner as is required for personal
 service of summons upon a party to an action.

1 RCW 6.27.130 (Emphasis added).

2 75. Plaintiff first received notice of writ of garnishment as a result of a copy of the
3 Answer of Garnishee, mailed to her by Account Services, WSECU, on February 9, 2010,
4 notifying her of an order requiring attachment of funds from her bank account.

5 76. Defendants violated RCW 6.27.130 by failing to either mail or personally serve
6 the Plaintiff with a copy of the writ and claim form as required.
7

8 77. Defendant Asset Acceptance is vicariously liable for the actions of Defendant
9 Gordon in violation of the FDCPA.

10 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
11 severally, as follows:

- 13 a. Adjudging that Defendants violated 15 U.S.C. § 1692f;
- 14 b. Awarding Plaintiff statutory damages pursuant to 15 U.S.C. §1692k, in the
15 amount of \$1,000.00;
- 16 c. Awarding Plaintiff actual damages pursuant to 15 U.S.C. §1692k.
- 17 d. Awarding Plaintiff his reasonable attorneys' fees and costs incurred in this
18 action;
- 20 e. Awarding Plaintiff any pre-judgment and post-judgment interest as may be
21 allowed under the law;
- 22 f. Awarding such other and further relief as the Court may deem just and
23 proper.

25 ...

26 ...

TRIAL BY JURY

78. Plaintiff is entitled to and hereby demands a trial by jury.

Respectfully submitted this 8th day of December, 2010.

s/Jon N. Robbins
Jon N. Robbins
WEISBERG & MEYERS, LLC
Attorney for Plaintiff